

Commonwealth Edison Company

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Docket No. 13-0657

Application for a Certificate of Public Convenience and Necessity, pursuant to Section 8-406.1 of the Illinois Public Utilities Act, and an Order pursuant to Section 8-503 of the Illinois Public Utilities Act, to Construct Operate and Maintain a new 345 kilovolt transmission line in Ogle, DeKalb, Kane and DuPage Counties, Illinois.

BRIEF ON EXCEPTIONS OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

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**STATE OF ILLINOIS
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**BRIEF ON EXCEPTIONS OF THE STAFF OF THE
ILLINOIS COMMERCE COMMISSION**

Staff of the Illinois Commerce Commission (“Staff”), by and through its undersigned counsel, pursuant to Section 200.830 of the Rules of Practice of the Illinois Commerce Commission (“Commission” or “ICC”) (83 Ill. Adm. Code 200.830), respectfully submits its Brief on Exceptions in the instant proceeding.

I. Introduction

On December 2, 2013, Commonwealth Edison Company (“ComEd” or “Company”) filed a Verified Petition (“Petition”) and testimony in support of a Certificate of Public Convenience and Necessity (“CPCN” or “Certificate”) to install, operate, and maintain an overhead 345 kilovolt (“kV”) electric transmission line in Ogle, DeKalb, Kane, and DuPage Counties, pursuant to Section 8-406.1 of the Illinois Public Utilities Act (“PUA” or “Act”), 220 ILCS 5/8-406.1. ComEd also requested a Commission Order pursuant to

Sections 8-406.1 and 8-503 of the Act, 220 ILCS 5/8-406.1 and 220 ILCS 5/8-503, authorizing or directing ComEd to construct the transmission line and related facilities. ComEd refers to the proposed line and related work as the Grand Prairie Gateway Transmission Line Project (“Grand Prairie Gateway Project,” “Project,” or “GPG”). (Petition, 1.)

On December 4, 2013, Staff filed a Motion to Extend the 150 Day Deadline pursuant to subsection 8-406.1(g) of the Act, which was granted by the Commission. The following parties intervened in the docket: Thomas Pienkowski and Kristine Pienkowski; Jerry Drexler and Kristin Drexler; Michael and Jennifer Thompson; John Tomasiewicz; Wind on the Wires (“WOW”); Rob Mason; County of Kane; City of Elgin; Village of South Elgin, Kane County, Illinois; Forest Preserve District of Kane County; Board of Education of School District U-46; Invenergy Wind Development LLC; Wayne Muirhead, Dean Muirhead, and Dennis Muirhead; John Cash and Mary Lewis; Lynn Landmeier and Betty Landmeier; Ronald E. and Carol J. Nightingale; Mark Secco; Arlene Watermann; Susan and Charles Payne and Jeffery C. Payne; William Deutsch; Robert and Diane Mason; Denise Hubbard; Village of Burlington; Kenyon Brothers Company; Caterpillar Inc., ExxonMobile Power & Gas Services, Inc., and Thermal Chicago Corporation as Illinois Industrial Energy Consumers (“IIEC”); Ronald Hammes and Linda Hammes; Ellen Roberts Vogel; Oak Ridge Farm Homeowners Association; City of Sycamore; Ogle County; Darle D. Butts; Thomas D. and Shelley J. Rhoades; Constance E. Jones; William Deutsch, Christine Deutsch and Patrick Deutsch; Saddlebrook Unit II Property Owners Association; and Utility Risk Management Corporation.

Evidentiary hearings were held on April 15-17, 2014, and the record was marked heard and taken.

Initial Briefs (“IB”) were filed on April 30, 2014 by: Staff; ComEd; Wind on the Wires; the Illinois Industrial Energy Consumers; William, Christine and Patrick Deutsch; Jerry Drexler and Kristine Drexler; William Lenschow, Thomas and Kristin Pienkowski, Robert and Diane Mason, John Tomasiewicz, Ellen Roberts Vogel, and Utility Risk Management Corporation (“URMC”); the City of Elgin; and Charles, Susan and Jeffrey Payne.

On May 1, 2014, ComEd filed a Supplement to Verified Petition of Commonwealth Edison Company stating that it had failed to properly provide a list of names and addresses of landowners and/or taxpayers to the Commission that had been obtained from County Assessors records more than thirty days prior to the filing of the Petition. (ComEd Supplement to the Verified Petition, 2.) Commission rules require that such records be taken not more than thirty days prior to the filing of a Petition under Section 8-503 of the Act. 83 Ill. Admin. Code § 200.150(h). ComEd provided notice to landowners the name and addresses of whom were obtained on April 24, 2014.

Reply Briefs (“RBs”) were filed on May 9, 2014 by: Staff; William Deutsch, Christine Deutsch and Patrick Deutsch; City of Elgin; ComEd; Jerry Drexler, Kristine Drexler, William Lenschow, Thomas Pienkowski, Kristin Pienkowski, Robert and Diane Mason, John Tomasiewicz, Ellen Roberts Vogel, and Utility Risk Management; and Charles Payne, Susan Payne, and Jeffrey C. Payne.

On May 29, 2014, ComEd filed a Motion for Leave to File an Amendment to Its Petition (“Motion”).

Following ComEd's additional notice to landowners, the following parties intervened: Tom Frey, Robert and Carolyn Barnes, Rachel Lange, Riley Scaggs, Craig Luxton, Frederick and Shaena Dietz, David and Pamela Neisendorf, Tim and Christine Polz, and William Manns; Charles E. Smith and Sandra K. Smith; Thomas and Beth Schramm; Robert A. Treadwell; and Steven L. Schelkopf, individually and as successor trustee under Declaration of Trust of Russell L. Schelkopf.

On May 28, 2014, the Administrative Law Judges ("ALJs") reopened the record and set a schedule for limited additional evidentiary hearings and briefs. On July 9, 2014, the Commission accepted ComEd's amended petition and found that such acceptance reset the statutory timeline. *Commonwealth Edison Co.*, ICC Order on Motion to File Amended Petition, Docket No. 13-0657, 2 (July 9, 2014). The 150 day statutory deadline was reset to begin on May 29, 2014, the date ComEd filed its Motion, and the final deadline is October 27, 2014.

An evidentiary hearing was held on July 23, 2014 and the record was again marked heard and taken. IBs on Reopening were filed on August 4, 2014 by: Thomas and Beth Schramm; Sandra Smith and Charles Smith; Tom Frey, Robert and Carolyn Barnes, Craig Luxton, Frederick and Shaena Dietz, David and Pamela Neisendorf, Tim and Christine Polz, and William Manns (collectively, "Burlington Group Intervenors"); Staff; ComEd; and Jerry Drexler, Kristine Drexler, William Lenschow, Thomas Pienkowski, Kristin Pienkowski, Robert and Diane Mason, John Tomasiewicz, Ellen Roberts Vogel, and Utility Risk Management Corporation. On August 15, 2014, the following parties filed RBs on Reopening: ComEd; Staff; Jerry Drexler, Kristine Drexler, William Lenschow, Thomas Pienkowski, Kristin Pienkowski, Robert and Diane Mason,

John Tomasiewicz, Ellen Roberts Vogel, and Utility Risk Management Corporation; City of Elgin; William Deutsch, Christine Deutsch and Patrick Deutsch; Thomas Schramm, Beth Schramm, Charles Smith and Sandra Smith; and Charles Payne, Susan Payne, and Jeffrey C. Payne.

On August 28, 2014, the Chairman and Commissioners directed certain discovery questions to ComEd. (Notice of Administrative Law Judges' Ruling, 1.) On September 4, 2014, the ALJs reopened the record on their own motion. (Notice of Administrative Law Judges' Ruling, 1.) Also on September 4, 2014, the ALJs issued a Proposed Order ("PO"). On September 11, 2014, ComEd provided responses to the questions of the Chairman and Commissioners. Parties may make replies to the ComEd response on September 18, 2014. Additionally, on September 18, 2014 parties may file Briefs on Exception to the PO, pursuant to the schedule set by the ALJs.

Pursuant to the schedule set forth by the ALJs, Staff respectfully submits its Brief on Exceptions.

II. Exceptions

The PO's conclusion to deny the Project should be reversed because: (1) ComEd satisfied the requirements of subsection 8-406.1(a)(1)(B)(viii) in either providing and identifying an alternate right-of-way or showing good cause to be excused from the requirement for all portions of the Project; (2) the record supports a finding that the Project is equitable to all customers and the least cost means of satisfying the objectives of subsection 8-406.1(f)(1); and (3) undergrounding of a portion of the Project is not an appropriate means to satisfy the alternate right-of-way requirement.

Exception No. 1: Staff's Position was not Accurately Reflected

V. Public Utilities Act § 8-406.1(f)(1)

B. Staff's Position

Generally, the PO's presentation of Staff's Position in Section V concerning subsection 8-406.1(f)(1) of the Act is correct. That said, the PO emphasizes Staff's concern with ComEd's rationale that the Project is justified by its impact on relieving Stage 1A ARR infeasibilities. Staff questioned whether maintaining Stage 1A ARR feasibility necessarily promotes the development of an effectively competitive market in the ComEd zone. While Staff did raise these concerns, Staff nevertheless argued that, based on other grounds, it is reasonable to say that the Project promotes the development of an effectively competitive electricity market, that operates efficiently, is equitable to all customers and is the least cost means of satisfying those objectives. (Staff IB, 29.) In other words, Staff found that the statutory standard of subsection 8-406.1(f)(1) of the Act had been met without relying on the alleviation of any ARR infeasibilities. This point should not be overlooked.

With that general understanding, Staff points out a more technical revision to the PO's discussion of Staff's position. On page 11, paragraph 3, the PO states:

Staff argues that ComEd has not supported its position that current or future infeasibilities of Stage 1A ARRs are necessary to promote the development of an effectively competitive electricity market but project would yield effectively competitive results for other reasons.

PO at 11.

It appears that the ALJs inadvertently repeated a Staff error of omitting the word "eliminating" in the above-quoted sentence. The omission is understandable, as Staff's IB included a heading (III.B.2.b) with the same inadvertent error. However, the

argument that followed (Staff IB at 22-30) demonstrates that inserting the word “eliminating,” as shown below, better summarizes the position under discussion. For example, Staff’s IB states: “the Company specifically relied on the fact that the Project was determined by PJM to be ‘necessary’ to relieve transmission constraints that are causing ‘infeasibilities’ in the allocation of Stage 1A Auction Revenue Rights (“ARRs”).” *Id.* at 23. Staff’s IB further states: “Therefore, Staff remains skeptical of ComEd’s position that maintaining Stage 1A ARR feasibility is an indispensable component of the PJM electricity market, particularly as it relates to the ComEd Zone.” *Id.* at 27.

Accordingly, the following changes to page 11 of the PO are recommended:

As an initial matter, Staff states that the Act does not delegate Illinois seizing authority to PJM. Staff argues that ComEd has not supported its position that eliminating current or future infeasibilities of Stage 1A ARR~~s~~ are is necessary to promote the development of an effectively competitive electricity market but the project would yield effectively competitive results for other reasons. Staff IB at 22-30.

(PO at 11.)

Exception No. 2: The Project is Equitable to All Customers and the Least Cost Means of Achieving the Statutory Objectives

The last sentence of subsection G, “Commission Analysis & Conclusion,” reads: “As discussed below, in the discussion of the routing for the project, the Commission finds that while the project will increase efficiency and lower the cost of transmission to ComEd’s customers, it is not clear from the record that the route is equitable to all customers or is the least cost method of achieving the statutory objectives.” (PO at 21-22.) Contrary to the above quoted sentence of the PO, the record evidence indicates that the Project is equitable to all customers and is the least cost method of achieving the statutory objectives, unrelated to ComEd’s arguments about the benefits of

alleviating the infeasibilities of the Stage 1 ARR to the ComEd zone. (Staff IB at 27-29.)

While ComEd argued that the Project satisfied subsection 8-406.1(f)(1) based on the purported benefits of alleviating the infeasibilities of Stage 1 ARRs in the ComEd zone, there is a more direct and concrete method of making that statutory determination. Specifically, an analysis that determines whether the Project is consistent with a market that is effectively competitive satisfies subsection 8-406.1(f)(1). *Id.* at 28. Staff concluded that the record shows the Project would be consistent with a market that is effectively competitive and that the net benefits indicate that the Project satisfies these statutory. *Id.* at 28-29.

In conclusion, Staff is of the view that the record evidence indicates that the Project is equitable to all customers and is the least cost method of achieving the statutory objectives. (See Staff IB at 27-29.) Therefore, Staff offers the following revisions to pages 21 and 22 of the PO:

As discussed below, in the discussion of the routing for the project, the Commission finds that ~~while the project will increase efficiency and lower the cost of transmission to ComEd's customers, it is not clear from the record that the route is equitable to all customers or~~ and that it is the least cost method of achieving the statutory objectives.

(PO at 21-22.)

Exception No. 3: ComEd appropriately provided and identified a primary right-of-way and an alternate right-of-way, except for the portion of the Project where ComEd showed good cause existed to excuse it from providing and identifying an alternative right-of-way

VIII. Route Of The Project

H. Commission Analysis & Conclusion

In Section VIII, starting on page 32, beginning with the fourth paragraph, the PO states:

In the public input phase of the proceeding, Elgin requested that ComEd investigate, as an alternative route, putting the transmission line underground for that portion of the project through the urban area. Elgin suggested using the same right of way proposed for the transmission line towers. ComEd concluded that this was too expensive but presented no specific evidence on the cost of undergrounding this portion of the project. Indeed, its transmission line cost expert denied having underground installation expertise. In the absence of hard numbers it is impossible to evaluate whether undergrounding this portion of project is a viable alternative when measured against the costs to the community of the project as proposed. A partial underground alternative route with less adverse residential impact may or may not have eliminated the favorable cost benefit ratio for the project.

Submitting evidence regarding the cost of undergrounding this portion of the Project lines as an alternate route would at least allow a reasoned determination to be made as to the costs incurred by ComEd and its customers versus the cost to Elgin and its impacted residents. ComEd's conclusory assertion of a negative cost analysis does not relieve it of its responsibility to submit this information to the Commission for its independent consideration, nor does it relieve ComEd of its burden of presenting adequate evidence demonstrating its proposed route is superior to other alternatives.

ComEd has not provided good cause in its filings for failing to identify an alternate route for the portion of the Project running through the City of Elgin. The Commission finds this requirement for the issuance of a CPCN has not been met.

PO at 32-33.

Staff takes exception to the PO's conclusion for the following reasons.

Good Cause Shown for Lack of Alternative to Elgin Portion

With respect to the 20% of the primary route for which ComEd did not provide an alternative *right-of-way* (sometimes referred to herein as the "Elgin portion"), subsection 8-406.1(a)(1)(B)(viii) of the PUA requires applicants under Section 8-406.1 to "provide and identify a primary right-of-way and one or more alternate rights-of-way for the Project as part of the filing." 220 ILCS 5/8-406.1(viii). An applicant, however, is excused

from providing and identifying an alternate right-of-way if the applicant can show “good cause [to be excused] in its filing.” *Id.* ComEd made a showing of good cause to excuse it from providing and identifying alternate rights-of-way for the Elgin portion of the proposed Project.

As Staff stated in its IB, “the application for an expedited Certificate of Public Convenience and Necessity submitted by ComEd included the requisite information required in subsection 8-406.1(a) of the PUA . . . [including the provision and identification by ComEd of] both the primary right-of-way and the alternative right of way, where good cause was not shown to excuse ComEd from providing an alternative right-of-way.” ((Staff IB at 34) (*citing* 220 ILCS 5/8-406.1(a)(1)).) Specifically, ComEd witness Mr. Kaup testified that:

For these segments of the Primary Route, the alternates considered were not viable for a number of reasons. ComEd does not have any existing property rights for an alternate route in these congested areas that provide a viable means of routing the Project into ComEd’s Wayne Substation. Alternates would require excessive additional line length compared to the Primary Route, and would cause considerably more impact in these congested areas.

(ComEd Ex. 4.0 at 4:81-86.) Mr. Kaup also testified that “it would be very difficult to route a line in a different right-of-way and not impact more people than we would be impacting in this line.” (Tr. at 112:12-15, April 14, 2014.)

Additionally, ComEd witness Ms. Murphy stated:

Given the densely developed regional area encompassing the Wayne Substation and the extent of proposed and platted development in this same regional area, the Routing Study diligently assumed a [right-of-way] width necessary to accommodate the Grand Prairie Gateway Project and potential future circuits. As such, the availability of viable opportunities along existing linear features where no existing residences would have to be displaced to accommodate the Project or potential future circuits was significantly lacking. The limited number of opportunities that were identified would require excessive line length, in comparison to the Primary Route near the Wayne Substation. Additionally, the

Primary Route parallels an existing transmission line across the Fox River, which provides for a reduced potential for impact specific to the river.

ComEd Ex. 5.0 at 23:446-455.

Staff witness Rashid performed a site inspection along the Proposed Primary and Alternate routes and concluded that ComEd showed good cause that excused it from identifying alternate rights-of-way for the Primary route along the Elgin portion of the Project. ((Staff Ex. 2.0 at 11) (*citing* ComEd Ex. 18.0 at 6).) Staff witness Mr. Rashid also confirmed that the Project's engineering criteria did not permit the width of the right-of-way to be decreased even though a decreased width might have alleviated some of the concerns of the Elgin residents with the route. (ComEd Cross Ex. 2 at 2.) The evidence supports Staff's conclusion that ComEd should be excused from providing an alternate *right-of-way* for the Elgin portion. 220 ILCS 5/8-406.1(a)(1)(B)(viii).

Undergrounding the Primary Route Is Not an Alternate Route Under the Statute

The PO's suggestion that undergrounding the primary route is an appropriate alternate route under the statute is in error. The statute specifically requires a public utility to either identify one or more alternate rights-of-way or show good cause why it should be excused from doing so. 220 ILCS 5/8-406.1(a)(1)(B)(viii). A "right-of-way" is not defined in Section 8-406.1, but, generally, is either a right of crossing over land or rights with respect the land itself, beyond simply a passage over it. *Joy v. St. Louis*, 138 U.S. 1, 44, 11, S.Ct. 243, 256 (1981). Therefore, in order for an applicant to provide primary and alternate rights-of-way in compliance with the statute, the applicant must identify an alternate that does not utilize the same strip of land as the primary right of way. 220 ILCS 5/8-406.1(a)(1)(B)(viii); see *Joy v. St. Louis*, 138 U.S. 1, 44. The mere

undergrounding of a route on the same land or right of way as the primary route would not satisfy the statutory requirement of providing and identifying an alternate right-of-way. 220 ILCS 5/8-406.1(a)(1)(B)(viii).

Undergrounding Costs Would Negatively Impact the Benefits of the Project As a Whole

If the Commission nevertheless determines that undergrounding the Elgin portion of the primary route is an appropriate alternative route, the Commission should reconsider whether the requirements of Section 8-406.1 have been met, taking into account the costs of undergrounding. Pursuant to the analysis Staff conducted in this proceeding, a cost-benefit analysis would need to be conducted to determine whether the project would “promote the public convenience and necessity” as well as whether the alternate route would be the least costs means of satisfying those objectives

In this instance, however, underground construction is not just more expensive – it is cost prohibitive and clearly does not satisfy the statute’s requirement of “least cost.” (ComEd IB at 17, *citing* ComEd Ex. 16.0, 4-5:69–103.) ComEd witness Mr. Kaup described a preliminary analysis of an underground equivalent of the proposed 345 kV overhead line, in which the incremental cost would be approximately \$12 million for two terminals plus \$31 million per mile. (ComEd Ex. 16.0, 4-5: 69-103.) Since the total route is approximately 60 miles long, and 20 percent of 60 is 12 miles, the incremental cost of undergrounding would be \$12 million plus \$31 million per mile times 12 miles, which is \$384 million. *See id.* Not only would an additional \$384 million for the Elgin segment alone more than double the \$251 million estimated cost of the primary route (ComEd Ex. 8.0 at 3.), it would completely wipe out the present value of the project’s net benefits, computed by Staff witness Zuraski to be in the range of \$121.1 million to

\$324.6 million. (Staff Ex. 4.0, at 30.) If undergrounding costs were taken into account, Staff's cost-benefit analysis presented in this docket would be vastly different. Staff's conclusion that the project would "promote the public convenience and necessity," a threshold requirement for projects proposed pursuant to Section 8-406.1, did not take into account these additional costs of undergrounding. 220 ILCS 5/8.406.1(f); (Staff Ex. 4.0 at 28-29.)

Company witness Mr. Kaup also testified that, as merely a preliminary estimate, the actual cost of undergrounding could vary by more than plus or minus 25 percent of the estimate. (Tr. at 116:14-19, April 15, 2014.) Mr. Kaup also indicated that, although he consulted with an *underground* transmission engineer at ComEd, he does not consider himself to be an expert in underground facilities. (Tr. at 118:14-16, April 15, 2014.) It is noteworthy that removing even as much as 30% from the incremental cost estimate would still amount to more than a doubling of the cost of the project: increasing costs by \$268.8 million rather than \$384 million. Hence, even given the preliminary nature of Mr. Kaup's estimates, the record is still adequate for the Commission to make a reasonable determination as to whether undergrounding the line is likely to be worth the additional cost to ratepayers generally.

The PO appears to rely on the approach utilized in dockets 12-0598 and 06-0706 in support of its conclusion (PO at 21-22, 32-33) and suggests that if ComEd submitted evidence regarding the cost of undergrounding the Elgin portion of the project as an alternate route, such evidence would at least allow the Commission to make a reasoned determination *as to the costs incurred by ComEd and its customers versus the cost to Elgin and its impacted residents.* ((PO at 32) (emphasis added).) The italicized

standard of the PO is too simplified an approach because it fails to fully take into account the 12 factors of the ATXI case and the statutory requirements. Id.

The statute requires that certain efficiency and market goals be met by the Project and once that determination is made, the statute then requires that the route chosen be “least cost” compared to an alternative route. 220 ILCS 5/8-406.1(f)(1). So long as the other statutory requirements (promotion of the development of an effectively competitive electricity market that operates efficiently and is equitable to all customers) are met, the least cost portion of the analysis is a simple comparison of construction costs between viable route options. While under certain circumstances it may be appropriate to consider criteria such as intangible costs in analyzing least cost (see e.g., *In Re Ameren Transmission Co. of Illinois*, ICC Docket No. 12-0598 (Aug. 20, 2013), in this case such an approach is not appropriate. Here the intangible costs associated with the easement, and by extension the Project, should be given less weight with respect to the landowners who purchased their property subject to the easement or who granted the easement to ComEd because they have already been compensated (either through a lower purchase price or monetarily) and should not be compensated again.

Costs of Undergrounding Of Elgin Portion Should Not Be Borne By Ratepayers Generally

In addition, Elgin residents are essentially requesting the additional costs of undergrounding be borne not just by them, but by all ComEd ratepayers. This is contrary to past Commission practice. In an appeal of a docket approving ComEd’s Rider 28, which would allow ComEd to recover costs associated with “extra services,” the requirement that a transmission line be underground, the court upheld the Commission and found that “the Commission has decided that Rider 28 should be

implemented because it is fairer to pass-through charges to those who benefit from extra service rather than to require Edison itself or all Edison consumers to bear the costs associated with the additional service.” *City of Chicago v. Ill. Commerce Comm’n*, 636 N.E.2d 704, 709 (1993); see, generally, *Commonwealth Edison Company*, Final Order, ICC Docket No. 92-0185. Moreover, the court agreed that there was substantial evidence in that record that the Commission “follows the concept of the cost causer being the cost payer.” *City of Chicago v. Ill. Commerce Comm’n*, 636 N.E.2d at 709.

Under the current FERC tariff regime, applicable to transmission lines and which allocates transmission costs regionally, it is not clear that Elgin residents would be bearing the undergrounding costs as a community. Rather these additional costs of undergrounding the lines in the Elgin portion would likely be passed along to ratepayers generally. Only if the Elgin residents were bearing the costs of undergrounding could a meaningful cost benefit analysis be conducted because the Elgin residents could decide themselves if paying the differential in constructions costs for undergrounding was worth it to avoid the impact and intangible costs of the above ground lines.

Further, intangibles such as the impact of the esthetics of overhead lines, the noise of the electric vibrations and other indirect costs to the residents are only captured, in cases where no easement exists for the line, in subsequent negotiations of property value diminishment or in eminent domain proceedings. To take these into consideration in this case, where easements exist, particularly because there is no mechanism to have the Elgin residents incur the differential of the costs of undergrounding the line, would tend to result in a bar to the building of transmission lines generally and, in particular, overhead transmission lines. This would exacerbate

the “not in my backyard” problem that always arises in connection with such construction. The statute itself has established the priorities for the Commission in connection with the building of transmission lines.

The Record Is Sufficient With Respect to Undergrounding Costs

The PO finds that the record is insufficient with respect to the costs of undergrounding the lines through the Elgin portion of the Project. Contrary to the PO’s conclusion, the record in this proceeding is adequate with respect to the additional costs of undergrounding the Elgin segment. (ComEd IB at 17, *citing* ComEd Ex. 16.0, 4-5:69–103.) Furthermore, it is a dangerous and slippery slope to argue, as the PO does, that one of the proposed options should have been the same route as another proposed route but with a portion placed underground. Since undergrounding is always more expensive, this would eviscerate the statute’s requirement of a utility proposal of at least two alternative routes, where viable. Any alternative that simply undergrounds a portion of another alternative route will inevitably be more costly than the same route built above ground. Comparing the proposed route to a nominally alternate route (which is actually the same proposed route) with a segment built underground, makes it clear that the PO’s requirement for additional undergrounding cost information is unnecessary.

Therefore, Staff recommends the insertion of the following new paragraph H in Section VIII of the PO:

Staff’s Position

Staff believes that based on ComEd’s testimony that alternate rights-of-way would require excessive additional line length compared to the primary right-of-way, and would cause considerably more impact in these congested areas, and Mr. Rashid’s field inspection of the proposed and alternate routes, ComEd has shown good cause that excuses ComEd from identifying alternate rights-of-

way for the 20% of the route identified in ComEd's filing. Staff agrees with ComEd that alternate rights-of-way for this portion of the Project would require excessive additional line length compared to the primary right-of-way, and would cause considerably more impact in these congested areas, thereby showing good cause exists to excuse ComEd from providing alternate rights-of-way for that portion of the Project.

In addition, the heading for the current Paragraph H on page 30 of the PO should be changed to Paragraph I as follows:

H.I. Commission Analysis & Conclusion

Finally, Staff recommends the following alternative language for Section VIII, page 32, of the PO:

In the public input phase of the proceeding, Elgin requested that ComEd investigate, as an alternative route, putting the transmission line underground for that portion of the project through the urban area. Elgin suggested using the same right of way proposed for the transmission line towers. ComEd concluded that this was too expensive. ComEd's preliminary estimates showed that undergrounding would cost approximately \$12 million for two terminals plus \$31 million per mile. For the 20% of the total 60 mile route traversing Elgin, these estimated parameters suggest a total incremental cost of \$384 million, which is well over the \$251 million estimated cost of the primary route (ComEd Ex. 8.0 at 3.) and in excess of the present value of the project's net benefits, computed by Staff witness Zuraski to be in the range of \$121.1 million to \$324.6 million. Staff Ex. 4.0 at 30. On the other hand, Company witness Kaup also admitted that the actual cost of undergrounding could vary by more than plus or minus 25 percent of the estimate. Tr. at 116. Mr. Kaup also indicated that, although he consulted with an underground transmission engineer at ComEd, he does not consider himself to be an expert in underground facilities. Tr. at 118. ~~but presented no specific evidence on the cost of undergrounding this portion of the project. Indeed, its transmission line cost expert denied having underground installation expertise. In the absence of hard numbers it is impossible to evaluate whether undergrounding this portion of project is a viable alternative when measured against the costs to the community of the project as proposed. A partial underground alternative route with less adverse residential impact may or may not have eliminated the favorable cost benefit ratio for the project.~~

Although a more thorough engineering analysis of undergrounding the Elgin portion of the primary route would have been preferable, the Commission finds ComEd's preliminary estimates to be credible and compelling enough to establish that undergrounding would not be the least-cost option. The record is also adequate to establish that the benefits of the project are unlikely to justify the additional cost of undergrounding. Submitting evidence regarding the cost of

~~undergrounding this portion of the Project lines as an alternate route would at least allow a reasoned determination to be made as to the costs incurred by ComEd and its customers versus the cost to Elgin and its impacted residents. ComEd's conclusory assertion of a negative cost analysis does not relieve it of its responsibility to submit this information to the Commission for its independent consideration, nor does it relieve ComEd of its burden of presenting adequate evidence demonstrating its proposed route is superior to other alternatives.~~

ComEd has ~~not~~ provided good cause in its filings for failing not to identifying an alternate route for the portion of the Project running through the City of Elgin. The Commission finds this requirement for the issuance of a CPCN has ~~not~~ been met.

Exception No. 4: Staff's Alternative Exception

If, notwithstanding Staff's arguments herein, the Commission agrees with the PO and remains concerned about the Elgin portion of the Project, then Staff recommends an alternative. To the extent the Commission determines ComEd (1) "failed to propose the statutorily required alternative route for the 20% of the overall length of the project that goes through Elgin to the Wayne Substation"; (2) failed to show good cause as to why it did not do so; and (3) should have investigated, as an alternative, placing the transmission line underground for that portion of the project, the Commission should approve the project but withhold, in any certificate granted in this proceeding, the Commission's permission to construct the route through Elgin to the Wayne Substation until additional evidence supporting the Elgin portion is provided to the Commission at rehearing. (PO at 32.)

The Commission utilized a similar approach in Docket No. 12-0598, wherein Ameren Transmission Company of Illinois ("ATXI") provided alternative routes for a segment, but did not consider to the satisfaction of the Commission Staff's preferred

alternative for that segment. Ameren Transmission Company of Illinois, ICC Final Order Docket No. 12-0598, 83 (Aug. 20, 2013). The Commission concluded:

[I]t appears to the Commission that ATXI argues that ATXI and MISO considered many different route options, and since Kincaid to Mt. Zion was not chosen, it is reasonable to conclude that it was not optimal. . . . The Commission gives little weight to the argument that this alternative must have been considered and found wanting. The Commission . . . will not find that the proposed ATXI Alternative Route 2 is the least-cost option after consideration of all the evidence presented. The Commission will therefore decline to include as a portion of the Illinois Rivers Project authorization to construct a transmission line from Pawnee to Pana.

Id. at 83-84.

Therefore, if the Commission determines ComEd failed to provide an alternative route and failed to show good cause to be excused from providing and identifying an alternate right-of-way, then Staff recommends the Commission approve the Project overall while excluding the Elgin to Wayne Substation segment from any CPCN it grants until a rehearing is conducted. Additionally, Staff notes that, as in Docket No. 12-0598, this may “virtually necessitate rehearing just to complete the line.” (Ameren Transmission Company of Illinois, Regular Open Meeting Minutes, 12 (Sept. 10, 2013).) At a rehearing, parties will be given the opportunity to provide additional evidence to support or deny the Elgin portion of the Project.

Exception No. 5: The Findings and Ordering Paragraphs should be Consistent with Staff’s Primary Position.

The above revisions to Section VIII would require further changes to the Findings and Orderings Paragraphs of Section XII, as described below.

XII. FINDINGS AND ORDERINGS PARAGRAPH

- (1) ComEd is a public utility pursuant to the Act;

- (2) the Commission has jurisdiction over ComEd and the subject matter of this proceeding;
- (3) the facts recited and conclusions reached in the prefatory portion of this Order are supported by the evidence and are hereby adopted as findings herein;
- (4) ~~that portion of the Primary Route Byron, Illinois and Elgin, Illinois for which an alternative route has been submitted~~ should be approved;
- (5) pursuant to Section 8-406.1(f)(1) of the Act, the Commission finds ComEd has not provided evidence that the GPG Project is necessary to provide adequate and efficient service or that it would increase reliability;
- (6) the Commission finds that the GPG Project ~~other than the 20% of the overall length of the project through Elgin to the Wayne Substation~~ will promote the development of an effectively competitive electricity market that operates efficiently, is equitable to all customers, and is the least-cost means of satisfying those objectives;
- (7) the Commission finds that ComEd has not failed to identify an alternate right of way for 20% of the project, but has ~~and it has failed to show~~ good cause why it should be excused from providing and identifying an alternative right of way for that part of the project ~~required~~ pursuant to Section 8-406.1(a)(1)(B)(viii) of the Act;
- (8) ~~pursuant to finding (7), the Commission denies Commonwealth Edison's an order authorizing the GPG Project pursuant to Section 8-503 of the Act;~~
- (~~8~~9) pursuant to Section 8-406.1(f)(2) of the Act, the Commission finds that ComEd is capable of efficiently managing and supervising the construction process and has taken sufficient action to ensure adequate and efficient construction and supervision of the construction process;
- (~~9~~10) pursuant to Section 8-406.1(f)(3) of the Act, the Commission finds that ComEd is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers;
- (9) pursuant to findings (6) through (10), the Commission grants ComEd an order authorizing the GPG Project pursuant to Section 8-503 of the Act;
- (11) all motions, petitions, objections, and other matters in this proceeding which remain unresolved should be disposed of consistent with the conclusions herein.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that ComEd's Verified Petition is hereby ~~denied~~ granted, in accordance with the conclusions and findings set forth above.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.800, this Order is final; it is not subject to the Administrative Review Law.

III. Conclusion

Staff recommends that the Commission adopt Staff's modifications to the ALJs' PO made herein.

Respectfully submitted,

_____/s/_____
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